This instrument prepared by:

Michael Sznapstajler

Cobb & Cole, P.A.

149 S. Ridgewood Avenue, Suite 700

Daytona Beach, FL 32114

**DECLARATION OF RESTRICTIVE COVENANT FOR PHASE 1C, UNIT I AND II AND JOINDER AND CONSENT OF MORTGAGEE**

 THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter “Declaration”) is made by Ponce Associates, LLC, a Florida limited liability company (hereinafter “GRANTOR”) and the Florida Department of Environmental Protection (hereinafter “FDEP”). This Declaration is neither extinguished nor affected by the Marketable Record Title Act pursuant to section 712.03, Florida Statutes (F.S.).

RECITALS

A. GRANTOR is the fee simple owner of that certain real property situated in the County of St. Johns, State of Florida, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter the “Restricted Property”). The Restricted Property described herein constitutes a portion of the Former Ponce de Leon Resort Brownfield Site, which has been platted as Phase 1C, Unit I and II of the Madeira at St. Augustine Subdivision (hereafter “Phase 1C, Unit I and II”). Attached hereto as Exhibit B, and incorporated herein by reference, is a sketch of the Restricted Property.

B. The FDEP Facility Identification Number for the Restricted Property isBF Site ID# 550601001 and ERIC\_13653. The facility name at the time of this Declaration is the Former Ponce De Leon Resort Brownfield Site*.* This Declaration addresses the arsenic impacts to soil and groundwater within Phase 1C Unit I and II resulting from the Restricted Property’s historic use as a golf course.

C. The Restricted Property was formerly operated as the Ponce de Leon Golf Course. As a result of these operations, arsenic impacts were discovered in soil and groundwater locations associated with the former tee boxes and greens of the golf course. Groundwater impacts were also noted in the location of the former maintenance building area for the golf course. The soil and groundwater impacts remaining on the Restricted Property are documented in the following reports that are incorporated by reference:

1. Remedial Action Status Report, dated December 14, 2017, submitted by Golder Associates Inc.; and
2. Groundwater Monitoring Report, dated August 27, 2018, submitted by SCS Engineers; and
3. Groundwater Monitoring Report, dated November 19, 2018, submitted by SCS Engineers; and
4. Groundwater Monitoring Report, dated May 31, 2019, submitted by SCS Engineers;
5. Remedial Action Status Report, dated August 2019, submitted by SCS Engineers;
6. Groundwater Monitoring Report, dated September 2019, submitted by SCS Engineers;
7. Remedial Action Status Report, dated September 2019, submitted by SCS Engineers;
8. Groundwater Monitoring Report, dated July 2020, submitted by SCS Engineers; and
9. Groundwater Monitoring Report, dated November 2020, submitted by SCS Engineers.

D. The reports noted in Recital C set forth the nature and extent of the contamination described in Recital C that is located on the Restricted Property. These reports confirm that contaminated soil as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Restricted Property. These reports document that groundwater does not exceed the groundwater cleanup target levels on the Restricted Property, but Grantor is restricting groundwater on the Restricted Property as set forth below.

E. It is the intent that the restrictions in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Restricted Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP will not issue a Conditional Site Rehabilitation Completion Order upon recordation of this Declaration for Phase 1C, Unit I and II, because site rehabilitation of other portions of the Former Ponce de Leon Resort Brownfield Site is ongoing. If cleanup criteria are later met, then FDEP, may issue a Conditional Site Rehabilitation Completion Order, or amend or repeal this Declaration, as appropriate.

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Restricted Property that the Restricted Property be held subject to certain restrictions and engineering controls, all of which are more particularly hereinafter set forth*.*

 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. GRANTOR hereby imposes the following restrictions and requirements:

a. i. There shall be no use of the groundwater under the Restricted Property, as shown on Exhibit B. There shall be no drilling for water conducted on the Restricted Property, nor shall any wells be installed on the Restricted Property other than monitoring or other wells pre-approved in writing by FDEP’s Division of Waste Management (DWM) in addition to any authorizations required by the Division of Water Resource Management (DWRM) and the Water Management District (WMD).

a.ii. For any dewatering activities on the Restricted Property, a plan approved by FDEP’s DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated.

a.iii. Attached as Exhibit C, and incorporated by reference herein, is a survey identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the Restricted Property. Such existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales, stormwater detention or retention facilities or ditches on the Restricted Property without prior written approval from FDEP’s DWM in addition to any authorizations required by the DWRM and the WMD. A revised exhibit must be recorded when any stormwater feature is altered, modified, expanded, or constructed.

b.i. The “Lot Restricted Area – Soil Cover” as located on Lots \_\_\_\_\_\_\_\_\_\_\_\_ of the Restricted Property and shown on Exhibit D shall be permanently covered and maintained with a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure (hereinafter referred to as the “Lot Restricted Area – Soil Cover”);

b.ii. The “Road Restricted Area – Asphalt Cap” as located on the Restricted Property and shown on Exhibit E shall be permanently covered and maintained with an asphalt cap that prevents human exposure (hereinafter referred to as the “Road Restricted Area – Asphalt Cap”);

b. iii. An Engineering Control Maintenance Plan (ECMP) has been approved by the FDEP. The ECMP specifies the frequency of inspections and monitoring for the Lot Restricted Area – Soil Cover and the Road Restricted Area – Asphalt Cap, and the criteria for determining when the Lot Restricted Area – Soil Cover and/or the Road Restricted Area – Asphalt Cap have failed. The Lot Restricted Area – Soil Cover and the Road Restricted Area – Asphalt Cap shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of the FDEP. The ECMP, as amended, relating to FDEP Facility No. BF550601001 and ERIC\_13653 can be obtained by contacting the appropriate FDEP district office or Tallahassee program area*;*

b.iv*.* Excavation and construction below the Lot Restricted Area – Soil Cover and the Road Restricted Area – Asphalt Cap is not prohibited provided any contaminated soils that are excavated are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas;

b.v.Construction of pools below or within the footprint of the Lot Restricted Area – Soil Cover is not prohibited provided that any contaminated soils that are excavated are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state and federal requirements, and such construction is completed and maintained pursuant to the terms of the Pool Installation Protocol incorporated into the ECMP; and

b.vi.Nothing in this Declaration shall prevent, limit or restrict any excavation or construction at or below the surface outside the boundary of the Lot Restricted Area – Soil Cover and the Road Restricted Area – Asphalt Cap.

3. In the remaining paragraphs, all references to “GRANTOR” and “FDEP” shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon, over and through and access to the Restricted Property at reasonable times and with reasonable notice to GRANTOR. Access to the Restricted Property is granted by an immediate adjacent public right-of-way, via Maralinda Drive, Bellatera Circle, and Serrano Lane.

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Restricted Property, run with the land and with the title to the Restricted Property, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP, and to any and all parties hereafter having any right, title or interest in the Restricted Property or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP’s rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and FDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify FDEP in writing within three (3) calendar days.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall record this declaration, and reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Grantor shall also ensure that this Declaration is referenced on the plat for the Restricted Property, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Restricted Property, GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration of Restrictive Covenant.

7. This Declaration is binding until a release of covenant is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from FDEP to remove or amend any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendment, including new or revised exhibits, must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Restricted Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Restricted Property.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, GRANTOR has executed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021.

GRANTOR

Ponce Associates, LLC

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Douglas G. Maier

 Vice President

1548 The Greens Way, Suite 6

Jacksonville Beach, FL 32250

Signed, sealed and delivered in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_, 20 \_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Vice President of Ponce Associates, LLC.

Personally Known \_\_\_\_\_\_\_ OR Produced Identification \_\_\_\_\_\_\_\_\_\_\_\_.

Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Notary Public

Commission No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021.

FLORIDA DEPARTMENT OF

ENVIRONMENTAL PROTECTION

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Greg Strong

 Director

Northeast District

8800 Baymeadows Way West, Ste. 100

Jacksonville, FL 32256

Signed, sealed and delivered in the presence of:

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_, 20 \_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as representative for the Florida Department of Environmental Protection.

Personally Known \_\_\_\_\_\_\_ OR Produced Identification \_\_\_\_\_\_\_\_\_\_\_\_.

Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Notary Public

Commission No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

**JOINDER AND CONSENT OF MORTGAGEE**

KNOW ALL MEN BY THESE PRESENTS:

**THAT FAIRCREST HOLDINGS, LLC,** a Delaware limited liability company, whose mailing address is c/o Reinet Investment Advisors Limited, Third Floor, Channel House, Green Street, St. Helier, Jersey JE2 4UH, (hereinafter Mortgagee”), hereby certifies that it is the holder of that certain Mortgage and Security Agreement (the “Mortgage”) recorded in Official Records Book 2693, Page 222, as modified by that certain Mortgage Modification Agreement dated August 31, 2008 and recorded on September 15, 2008 in Official Records Book 3123, Page 160, as assigned by instrument dated January 10, 2011 and recorded on January 20, 2011 in Official Records Book 3400, Page 682, and further amended and restated by instrument recorded in Official Records Book 3400, Page 1381, all of the Public Records of St. Johns County, Florida, which encumbers the property described on Exhibit “A” attached hereto and incorporated herein, owned by Ponce Associates, LLC (hereinafter “Owner”). Mortgagee hereby joins in and consents to the granting of the Declaration of Restrictive Covenant by the Owner to the Florida Department of Environmental Protection and agrees that the Mortgage shall be subordinated to the foregoing Declaration of Restrictive Covenant by and between Ponce Associates, LLC and the Florida Department of Environmental Protection.

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

WITNESSES: **LENDER:**

 **FAIRCREST HOLDINGS, LLC, a**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Delaware limited liability company**

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Anna Catharina Lambrechts

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: Director of RSF II Limited, as managing

member of Faircrest Holdings LLC

ST. HELIER, JERSEY

CHANNEL ISLANDS

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_, 20 \_\_, by Anna Catharina Lambrechts as Manager of Faircrest Holdings, LLC.

Personally Known \_\_\_\_\_\_\_ OR Produced Identification \_\_\_\_\_\_\_\_\_\_\_\_.

Type of Identification Produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Notary Public

Commission No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A

Legal Description of the Restricted Property

Madeira at St. Augustine Phase 1C, Unit I and II

EXHIBIT B

SKETCH OF THE RESTRICTED PROPERTY

EXHIBIT C

STORMWATER FEATURES

EXHIBIT D

Survey and Legal Description of Lot Restricted Area – Soil Cover

The Lot Restricted Area – Soil Cover consists of Lot Restricted Areas No. \_\_\_\_\_\_\_\_\_ and are specifically described below:

EXHIBIT E

Survey and Legal Description of Road Restricted Area – Asphalt Cap

The Road Restricted Area – Asphalt Cap consists of Road Restricted Areas \_\_\_\_\_\_, and are specifically described below: